s.21(1)(a)
s.23
s.21(1)(b)

Department of Justice Canada | Ministère de la Justice Canada

CCM#: 2016-001044
Secret
For Approval
Action by/Deadline: 2016/01/28

MEMORANDUM TO THE DEPUTY MINISTER

CONSULTATION PROCESS FOR EXTENDING THE *ACCESS TO INFORMATION ACT* TO ADMINISTRATIVE INSITUTIONS THAT SUPPORT THE COURTS (FOR APPROVAL)

s.69(1)(g) re (a)

SUMMARY

- In the context of a larger upcoming review of the *Access to Information Act* (ATIA), the Government has committed to extend that Act to cover administrative bodies that support the courts. [redacted]
- This note seeks your approval of a general approach for consultations with the administrative bodies that support the federal courts, taking into account the objectives of the ATIA and the principle of judicial independence.
- [redacted]
- [redacted]
- [redacted]
- [redacted]

DO YOU APPROVE?

s.69(1)(g) re (a)

Secret

BACKGROUND

The recent mandate letter requests that the Minister of Justice support the President of the Treasury Board's review of the *Access to Information Act* (ATIA). One of the Government's commitments is to apply the ATIA to administrative bodies that support the courts. The Act does not currently apply to the judiciary, the courts or to any of the federal specialized bodies that support either the section 101 courts (i.e., Registry of the Supreme Court of Canada (RSCC) and the Courts Administration Service (CAS)) or the federally-appointed judiciary more generally (i.e., Canadian Judicial Council (CJC) and the Commissioner for Federal Judicial Affairs (CJFA)).

This note seeks your approval of our proposed approach to consulting the relevant administrative bodies about the proposed extension of the ATIA.

Background to the commitment in the mandate letter

The ATIA remains substantially unchanged since it was enacted in 1983. Possibilities for reform of the Act have been studied by parliamentary committees, a Task Force, academics, non-governmental organizations, and the media. There have been recommendations both for and against extending the Act to cover aspects of the judicial branch of government.

In a March 2015 Special Report to Parliament, the Information Commissioner of Canada recommended extending the Act to bodies that provide administrative support to the courts -- in her view these included the Registry of the Supreme Court of Canada, the Courts Administration Service, the Office of the Commissioner for Federal Judicial Affairs and the Canadian Judicial Council (ANNEX 1). In order to protect judicial independence, the Commissioner recommended that the Act exclude records in court files, the records and personal notes of judges, and communications or draft decisions prepared by or for persons acting in a judicial or quasi-judicial capacity.

The Mandate Letter reflects a campaign commitment (ANNEX 2) to apply the ATIA to administrative bodies that support the federal courts. A recent speech of the Parliamentary Secretary for Justice to the House of Commons Committee of the Whole (ANNEX 3) repeated this pledge. The Government has not taken a public position on which bodies would necessarily be covered by the ATIA to meet the commitment.

The approaches of other jurisdictions are outlined in ANNEX 4.

Administrative bodies providing support to the federal courts

Of the four entities identified by the Information Commissioner, only the RSCC and the CAS actually constitute "bodies that provide administrative support to the courts". They provide courts administration services to the courts falling under federal jurisdiction (i.e., s. 101 courts, the provinces being responsible for courts administration in s. 96 courts). By contrast, the CFJA and the CJC are not courts administration entities, but were established to carry out distinct functions in support of the federally appointed judiciary and the administration of justice. ANNEX 5 provides a short description of the functions, structures, and budget of each body. The most salient points are:

- The RSCC and the CAS both offer some services that are purely administrative (e.g. ordering office supplies for administrators) and others that are purely judicial in nature (e.g. providing legal advice to judges). Other functions (such as human resource administration) may in particular circumstances straddle that divide.

- The CFJA is an arm's length organization established with the express objective of enhancing the independence of the judiciary in Canada. It plays sensitive roles relating to the judicial function – for example in relation to judicial appointments. It also administers more than $500 million in federal appropriations for judicial salaries, pensions, and allowances.

- The CJC is composed of the leadership of the federal courts and provincial superior courts. It investigates and makes recommendations respecting judicial discipline. It also promotes policies intended to support the core judicial function.

KEY CONSIDERATIONS / OPTIONS

The extension of the ATIA to any court-related bodies, including the RSCC and CAS, will require careful management. [redacted] Meaningful consultations with the relevant entities will be required, taking into account the objectives of the ATIA and the principle of judicial independence.

Objectives of the *Access to Information Act*

The primary objectives of the ATIA are to facilitate Canadians' democratic participation and to promote the accountability of public office holders. Until now, the focus of the ATIA has been on the executive branch, which is logical since an understanding of government actions is necessary to allow Canadians to exert meaningful influence on

democratic politics and to call decision-makers to account. The objectives of the Act take on a different aspect when applied to institutions that support the courts, which are not intended to be subject to political pressure or electoral politics. Transparency of the judicial function is achieved by other means, such as the open courts principle and the practice of providing judgments supported by detailed legal reasons.

The proposal to apply the ATIA to bodies that support the courts is focused on "administrative" rather than "judicial functions." The Information Commissioner cites the principle of accountability for expenditure of public funds as a reason to include judicial institutions.

[redacted]

Principle of judicial independence

The Supreme Court of Canada has held that an essential element of judicial independence is "administrative independence", which entails "judicial control over the administrative decisions that bear directly and immediately on the exercise of the judicial function." This furthers the overall objective to maintain public confidence that everyone has access to an impartial judge who is in control of the judicial proceedings, so that the rights of the person appearing before the bench will be determined solely on the basis of the facts and the law.

[redacted]

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[redacted]

Who should be consulted?

Since the Information Commissioner's report in the March 2015 Special Report specifically refers to the RSCC, CAS, CFJA, and CJC, [redacted]

Only the RSCC and the CAS are clearly courts administration bodies, supporting courts within federal jurisdiction. Those two organizations should be consulted about how the ATIA should best apply to them since they are directly implicated by the government's commitment. [redacted]

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The process for consultations

The content of the consultations

Department of Justice officials could convey the Minister's commitment to maintaining the administrative independence of the judiciary, while seeking the views of the courts administrators and the judiciary about:

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- the functions, activities, and records of the various bodies that support the courts;
- the practical relationship of various administrative activities and records to the judicial function;
- ways of accurately describing the distinctions among these types of activities and records for the purposes of exclusions or exemptions;
- oversight issues, particularly if the Information Commissioner were to be given a new power to order disclosure of documents;
- recourse to the courts under the ATIA when a requester challenges a decision of a judicial institution not to disclose records;
- practical, financial, and human resources consequences of extending the ATIA to bodies that support the courts; and
- potential pressures on the judiciary, and effects on public confidence in the administration of justice.

RESOURCE IMPLICATIONS

The Department of Justice should be able to undertake consultations with the administrative bodies that support the courts without exceeding current reference levels.

COMMUNICATION IMPLICATIONS

To date, the Government's commitments have not specified which organizations fall within its commitment to extend the ATIA to administrative bodies that support the federal courts. At this time, public communications on the question should be limited to:

- The Government has committed to exploring ways to extend the ATIA to administrative bodies that support the courts. A primary consideration will be how to ensure that this does not interfere with the fundamental principle of judicial independence.

RECOMMENDATIONS

It is recommended that you indicate your concurrence by signing the approval block in the summary box.

NEXT STEPS

[redacted]

Attachments
Annex 1 – Excerpt from the March 2015 Special Report of the IC
Annex 2 – Excerpt from the 2015 Liberal Election Platform
Annex 3 – Speech by the Parliamentary Secretary to the Minister of Justice
Annex 4 – Approaches in other jurisdictions
Annex 5 – Description of specialized federal institutions providing services to courts or the judiciary

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ANNEX

Courts

The judicial branch and its administrative support bodies are not covered by the Act. The *2014–2015 Estimates* lists the combined budget of the Supreme Court of Canada, the Office of the Registrar of the Supreme Court of Canada, the Courts Administration Service, the Office of the Commissioner for Federal Judicial Affairs and the Canadian Judicial Council as $611,143,383.

The constitutionally enshrined principle of judicial independence has been cited as the reason why these entities are not subject to the Act.[20] However, the access legislation of some provinces, as well as a number of other countries, applies to the courts' administrative records.[21] To allow for administrative records to be disclosed while still protecting judicial independence, some laws exclude certain types of records from their scope. For example, the access laws of Alberta and British Columbia exclude records in court files, the records and personal notes of judges, and communications or draft decisions of persons acting in a judicial or quasi-judicial capacity.

Extending coverage of the Act to court support services would promote accountability and transparency in the spending of public monies. The Commissioner recommends extending coverage of the Act to the bodies that provide administrative support to the courts, such as the Registry of the Supreme Court, the Courts Administration Service, the Office of the Commissioner for Federal Judicial Affairs and the Canadian Judicial Council.

Recommendation 1.6

The Information Commissioner recommends extending coverage of the Act to the bodies that provide administrative support to the courts, such as the Registry of the Supreme Court, the Courts Administration Service, the Office of the Commissioner for Federal Judicial Affairs and the Canadian Judicial Council.

Recommendation 1.7

The Information Commissioner recommends that the Act exclude records in court files, the records and personal notes of judges, and communications or draft decisions prepared by or for persons acting in a judicial or quasi-judicial capacity.

20 Judicial independence is a guarantee that judges will make decisions free of influence and based solely on fact and law. The 2002 task force that studied the Act cited the importance of maintaining judicial independence as the reason for not recommending that the courts be covered by the Act (*Making it Work for Canadians* at p. 29).

21 In Canada, these jurisdictions include B.C., Alberta, P.E.I. and Nova Scotia. The access laws of Serbia, India and Mexico similarly apply to courts' administrative records.

ANNEX

Real CHANGE

OPEN AND TRANSPARENT GOVERNMENT

It is time to shine more light on government and ensure that it remains focused on the people it is meant to serve. Government and its information should be open by default. Data paid for by Canadians belongs to Canadians. We will restore trust in our democracy, and that begins with trusting Canadians.

ACCESS TO INFORMATION

We will make government information more accessible.

Government data and information should be open by default, in formats that are modern and easy to use. We will update the *Access to Information Act* to meet this standard.

We will make it easier for Canadians to access information by eliminating all fees, except for the initial $5 filing fee.

We will expand the role of the Information Commissioner, giving them the power to issue binding orders for disclosure.

We will ensure that Access to Information applies to the Prime Minister's and Ministers' Offices, as well as administrative institutions that support Parliament and the courts.

To ensure that the system continues to serve Canadians, we will undertake a full legislative review of the *Access to Information Act* every five years.

FROM HANSARD (DEC. 9/2015)

Mr. Sean Casey (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.):

Madam Chair, I propose to allocate my time with remarks of about 10 minutes and then a question and answer period.

I am pleased to rise on behalf of the Government of Canada to speak about how we will strengthen our access to information system, a key issue facing Treasury Board. We firmly believe that government data and information should be open by default, in formats that are modern and easy to use. We promise to deliver an improved access to information system, because we are committed to upholding the democratic principles of openness and transparency.

We recognize that Canadians cannot meaningfully participate in a democracy without having the information they need. Indeed, we believe that information for which Canadians paid belongs to Canadians. They have every right to access it.

To that end, we will review the Access to Information Act to ensure it provides the openness and accountability Canadians expect. We will ensure that the government is fair, open, and accountable to all Canadians.

Reviewing the access to information system will also bring greater transparency, open the doors for greater public participation in governance, and support the Government of Canada's commitment to evidence-based decision-making.

Canada's access to information legislation has not been substantially updated since 1983. How much our world has changed since then. The proliferation of personal technology, like smart phones, has altered so many aspects of our lives.

We recognize that technology in all forms is changing how citizens interact with their government in powerful ways; so, in the coming months we will look at ways to align Canada's access to information system with those modern realities.

Releasing information in easy to use formats, which will ensure that Canadians have meaningful access to their government, is one of the most important and substantive changes we can make. Our review of the access to information system will explore, among other updates, how we can make usable formats a reality.

Another part of our commitment to openness involves eliminating barriers wherever we can. We committed to Canadians that we would eliminate fees for accessing government information, with the exception of the initial fee for filing a request. We believe that Canadians should not have to foot the bill for information that belongs to them.

In addition to reducing financial barriers, we will look at reducing systemic barriers. For example, we will examine ways to expand the scope of the Access to Information Act so that it applies to the Prime Minister's office, to ministers' offices, and to bodies that support Parliament and the courts.

We will do this because we know that Canadians want us to pull back the curtain on the factors that influence the decisions that affect their lives. Canadians expect to know how and why decisions are made on their behalf, though we also acknowledge the valid and important reasons behind protecting some information.

These reasons include protecting Canadians' personal information, withholding information that would put someone's safety or national security at risk, and ensuring that officials can provide full, free, and frank advice to the government. We will work with all stakeholders to strike the right balance.

The government also recognizes that Canadians want and deserve easier access to their own personal information. We will explore ways to strengthen this aspect of the existing system. We want to create a system that is more nimble, responsive, and convenient.

These kinds of sweeping changes cannot happen in a vacuum. We look forward to working with the Information Commissioner and other interested Canadians on the review of the Access to Information Act. In fact, we consider the Information Commissioner to be an important partner in our review of Canada's access to information system.

Indeed, we heard earlier from the President of the Treasury Board, in answer to a question, that the initial contact, initial meeting, initial approach, has already taken place.

No access to information regime is complete without meaningful and effective oversight. We promised Canadians that we would find ways to empower the Office of the Information Commissioner to order government information to be released in situations where doing so would be in keeping with the purposes of the Access to Information Act.

(1635)

We look forward to working with the Information Commissioner to foster a strong and responsive access regime.

We also recognize that this cannot be a one-off initiative. We have been witness to many changes in society and in technology since our access to information legislation came into force in 1983. We need to find ways to ensure that the system continues to grow and change alongside us. We cannot allow our access to information practices to become stagnant.

A vibrant and evolving access to information system will support a strong, open, and transparent democracy. One way to ensure the continued strength of the access to information system is to undertake a full legislative review of the Access to Information Act every five years. Legislative reviews provide an important opportunity for Canadians to have their say on access rights and to help us ensure that the system continues to meet their needs.

Given the importance of these changes and their complexity, the government will take the time necessary to hear from interested Canadians on this issue and to fully examine all the options. We will come forward with proposals to enhance and build on the existing strengths in the system.

These are early days. We will announce more details about the review in the coming months.

We look forward to working with all the stakeholders to ensure that we develop balanced, reasonable, and feasible proposals. I welcome the input from the committee members gathered here on ways in which we can enhance our access to information regime.

[Expand]

Mr. Kevin Lamoureux (Parliamentary Secretary to the Leader of the Government in the House of Commons, Lib.):

Madam Chair, the member made reference to access to information. One of the major platforms of the party was to deal with access.

The member will recall that it was not that long ago when the Prime Minister, then as the leader of the Liberal Party, took the initiative on proactive disclosure, believing in the importance of transparency and accountability. I think that had a great deal of influence in wanting to move forward and show more transparency and accountability, which seems to be a common thread for the Prime Minister.

I wonder if the member might want to reflect on the importance of issues such as proactive disclosure and ultimately how access to information is yet another step in what seems to be something that is very important to our Prime Minister and to the Liberal Party of Canada.

(1640)

ANNEX 4

Approaches in other jurisdictions

It is the provinces' responsibility to govern access to information held by section 96 courts and their related courts administration services. The access laws of five provinces (Alberta, British Columbia, Nova Scotia, Prince Edward Island, and recently Newfoundland and Labrador) apply to 'court administration records' that are under the control of provincial public bodies that support the courts. The access acts in these provinces also contain provisions that exempt from disclosure administrative records that essentially relate to judicial functions. In other Canadian jurisdictions, the administration of courts falls outside the ambit of access laws. No Canadian jurisdiction directly subjects courts themselves to access requirements.

The approaches in foreign jurisdictions vary widely. The UK excludes the judicial branch from their access to information laws. This is also the situation in New Zealand, although its government has committed to include the administrative functions of its courts in access legislation when it renews the NZ *Judicature Act 1908*. In Australia requesters have been able seek access to court documents of an administrative nature under the federal and state laws since 1979, and this has apparently not caused major difficulties. In the United States, courts are not covered under the federal *Freedom of Information Act*, but the reverse is true in the states of Connecticut, Hawaii, Missouri and Rhode Island which all extend their access laws to courts' administrative functions. Other jurisdictions that subjected courts' administrative functions in their access to information acts include India, Israel, Jamaica, Mexico, South Africa, Trinidad and Tobago and Thailand.

Canadian and foreign comparisons in this area should be approached with caution, since the underlying machinery choices for delivering administrative services to courts vary markedly among jurisdictions.

ANNEX 5

DESCRIPTION OF SPECIALIZED FEDERAL BODIES PROVIDING SERVICES TO THE JUDICIARY OR THE COURTS

Pursuant to the *Supreme Court Act*, the Registrar, a Governor in Council appointee, heads the RSCC and is responsible for the management of its employees, resources and activities. The *Supreme Court Act* provides that the Registrar shall, under the direction of the Chief Justice, superintend the officers, clerks and employees of the Court, report and publish the judgments of the Court, as well as manage and control the library of the Court. Section 18 of the *Supreme Court Act* enables the Registrar to exercise the jurisdiction of a judge sitting in chambers to the extent this authority is granted under the general rules or orders made under the Act.

The RSCC is organized in three sectors: the Judicial Support and Protocol Services Sector, which is responsible for the delivery of all judicial support services, including judicial administration and the Law Clerk program; the Court Operations Sector, which is responsible for legal advice and operational support for the judges, including case management, scheduling of cases, legal research and editing, and information management services; and the Corporate Services Sector, which is responsible for administrative and operational support such as corporate reporting, human resources, security, accommodations, and IT services. The planned expenditures for 2015-16 for the Supreme Court amount to $32.2M, of which approximately $24.7M reflect the cost of court operations and internal services (the remaining expenses represent the statutory expenses associated with judges' salaries, allowances and annuities.)

The CAS was established under the *Courts Administration Service Act* to provide effective and efficient registry, judicial and corporate services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada and the Tax Court of Canada. Pursuant to the Act, the Chief Administrator has all the powers necessary for the overall effective and efficient management and administration of all court services, including court facilities and libraries and corporate services and staffing. Judicial services are provided by legal counsel, judicial administrators, law clerks, jurilinguists, judicial assistants, library personnel and court attendants, under the direction of the four Chief Justices. The Act provides that the powers of the Chief Administrator do not extend to any matter assigned by law to the judiciary and confirms that the Chief Justices are responsible for the judicial functions of their courts, including the direction and supervision over court sittings and the assignment of judicial duties. The planned expenditures for 2015-16 for CAS's Judicial, Registry and Internal Services amount to approximately $63.9M.

The FJA was established under the *Judges Act* in 1978 as an arm's length agency to administer judicial salaries, allowance and other benefits for the federally-appointed judiciary (other than the judges of the Supreme Court). Pursuant to section 74 of the Act, the Commissioner administers Part I of the *Judges Act*, prepares budgetary submissions and provides administrative support and services to the Canadian Judicial Council, and performs such other duties as the Minister of Justice may require including the operation of the Judicial Appointments Secretariat, support to the Supreme Court of Canada appointments process, publication of the *Federal Courts Reports*, the provision of language training to judges, the coordination of judicial international cooperation activities, and support to the Judicial Compensation and Benefits Commission. The planned expenditures for the FJA for 2015-16 including payments pursuant to the *Judges Act* (salaries, pensions, and allowances) but excluding expenses related to the CJC amount to $523.2M. This amount decreases to $7.9M when statutory appropriations under the *Judges Act* are excluded.

The CJC was established in 1971 under Part II of the *Judges Act*. It is composed of all federally appointed Chief Justices and Associate Chief Justices, as well as the senior judges of the Yukon, Northwest Territories and Nunavut. The Council is chaired by the Chief Justice of Canada. It has the mandate to promote efficiency, uniformity, and accountability, and to improve the quality of judicial service in the superior courts of Canada. The Council is also mandated to consider complaints and administer the judicial discipline process for the federally appointed judges. The Council is supported by a secretariat of ten employees and has a number of Committees, Sub-Committees and Working Groups that work to address issues of broad concern to the judiciary, such as judicial conduct and ethical principles for judges. Planned expenditures for the CJC in 2015-16 amount to $1.7M.

Department of Justice Canada | Ministère de la Justice Canada

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Unclassified
For Information

MEMORANDUM TO THE DEPUTY MINISTER

Deck on Trends in the Criminal Justice System (FOR INFORMATION)

SUMMARY

- A deck on trends in the criminal justice system (CJS) was requested by the Deputy Minister to inform the Minister on what key issues and pressures exist in the CJS across Canada.
- The Research and Statistics Division prepared a deck entitled "Trends in the Criminal Justice System".
- The Deck is attached at Annex A.

BACKGROUND

On December 22, 2015, the Deputy Minister met with the Director General of the Policy Integration Coordination Section and a representative from the Research and Statistics Division. At that meeting the Deputy Minister requested a deck on Trends in the Criminal Justice System (CJS) in order to inform the Minister on key issues and pressures impacting the CJS. The deck is attached at Annex A.

DISCUSSION

The attached deck provides an overview of specific trends in the criminal justice system. Of note, the deck highlights:

- the increasing costs in the CJS, despite a decreasing crime rate;
- the jurisdictional differences in the crime rate, noting that crime rates are highest in the provincial north and the Territories;
- the high proportion of certain crimes not reported to police and the reasons provided for not reporting;
- issues and trends related to vulnerable populations (i.e., those with mental health issues, substance abuse problems and neurocognitive disorders);
- that we are lacking a full picture of issues related to bail;
- that more than half of accused in custody have not been sentenced;
- that administration of justice offences, impaired driving offences and theft account for over 40% of the court caseload as well as a large proportion of resources; and,

- that Indigenous offenders are overrepresented in both provincial/territorial and federal corrections and that this has been increasing over the past decade.

Many of the criminal justice system pressures (e.g., increased use of remand, increasing number of mandatory minimum penalties, high rates of Administration of Justice Offences, etc.) are disproportionately and negatively affecting Indigenous accused and other vulnerable groups.

RESOURCE IMPLICATIONS

N/A

COMMUNICATION IMPLICATIONS

N/A

NEXT STEPS

The deck at Annex A provides more detail on specific "Trends in the Criminal Justice System" and can be used to inform the Minister. We welcome any further changes or additional information you would like added to the material provided.

Attachment(s)
Annex A – Trends in the Criminal Justice System

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CCM#: 2016-001746

SERVING CANADIANS

DEPARTMENT OF JUSTICE

Trends in the Criminal Justice System

Research and Statistics Division
January 17, 2016

Ministère de la Justice Canada | Department of Justice Canada

Canada

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CCM#: 2016-001746

Highlights

- Costs of the Criminal Justice System (CJS) are high and increasing, despite a decreasing crime rate
- Crime rates are highest in the provincial north and the Territories
- In 2014, most victims of sexual assault did not report the crime to police
- Chronic (repeat) offenders are responsible for a large volume of crime
- Accused with mental health, substance abuse, and neurocognitive disorders (e.g., Fetal Alcohol Spectrum Disorder) are overrepresented in the CJS
- Indigenous people are overrepresented both as victims and offenders and this has been increasing since the *Gladue* decision
- We are lacking a full picture of the bail issue, however, for the 10th consecutive year, accused in remand outnumber those in sentenced custody
- Administration of justice offences represent the highest volume of cases in adult criminal court

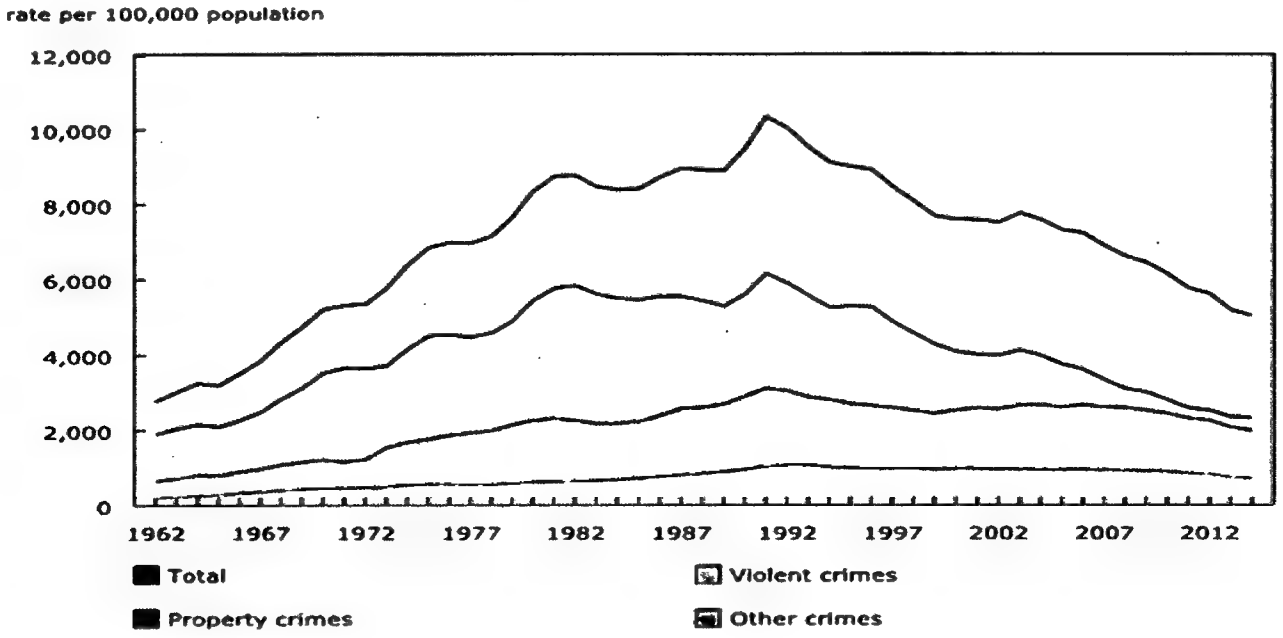
Costs of the CJS are high and increasing

- In 2008, the total cost of the criminal justice system was $15 billion.
- The total tangible (e.g.., health care, productivity loss) costs of *Criminal Code* offences was approximately $31.4 billion in 2008.
- From 2002-2012, despite a decreasing crime rate there was a 36% increase in the overall CJS costs.
  - Costs increased 22% per Canadian (from $480-$580).
  - Federal CJS costs increased by 33% and provincial CJS costs increased by 37%.
  - Policing costs increased 43%.
  - Court system costs increased 21%.
  - Corrections costs increased 32%.

Cost Category	Costs $ (Millions)
Criminal Justice System Costs 2008	
Police	$8,587
Court	$672
Prosecution	$528
Legal aid	$373
Corrections	$4,836
a. Adult Corrections	$3,869
b. Youth Corrections	$967
Criminal Code Review Board	$12
TOTAL CRIMINAL JUSTICE SYSTEM COSTS	$15,009

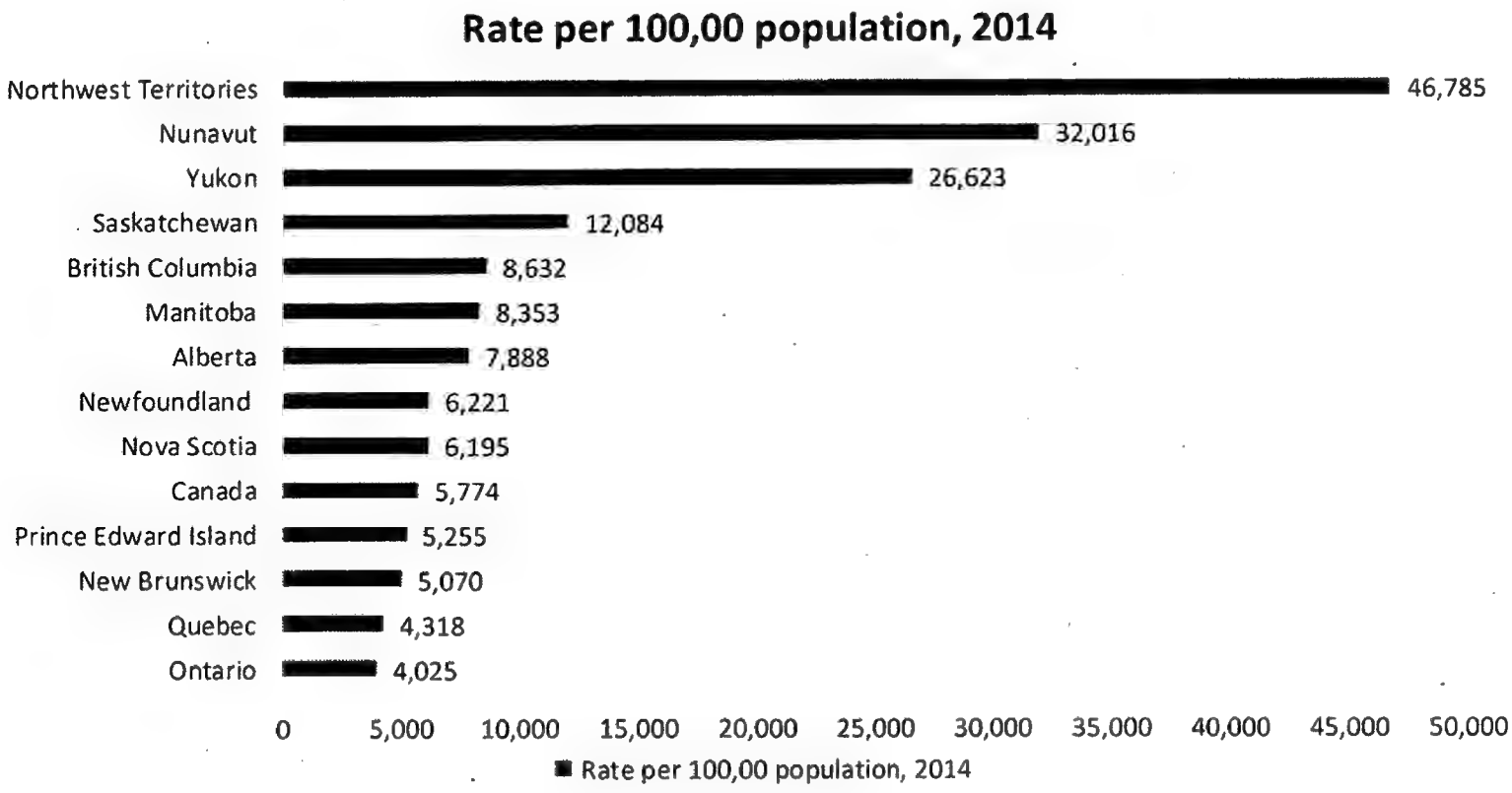
Tangible costs include such things as health care, productivity loss, stolen or damaged property

While CJS costs are increasing, police-reported crime rate is at its lowest since 1969

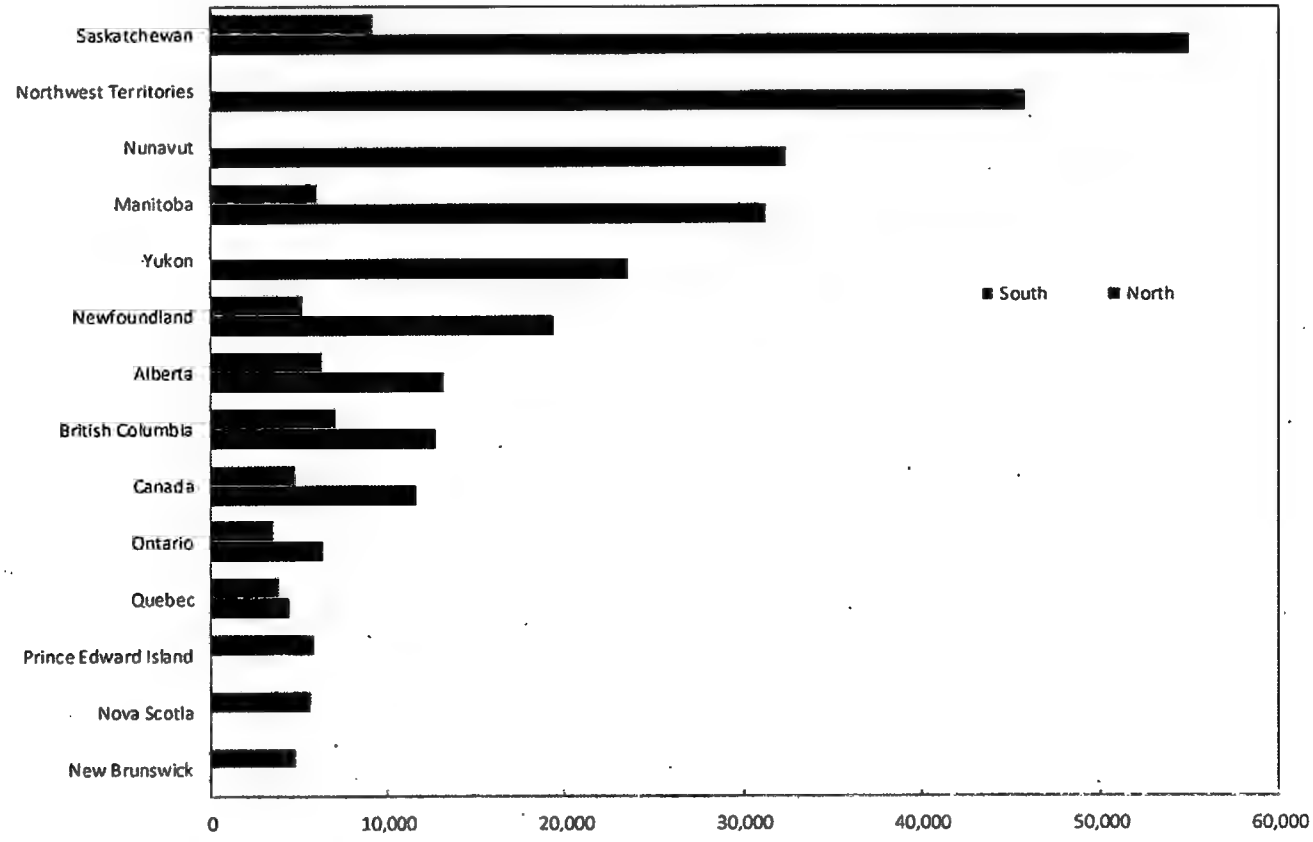


- 2014 represented the 11th consecutive decrease in the police reported crime rate.
- The rate of violent crime peaked in 2000 and has steadily decreased. The rate of violent crime has decreased by 26% from 2004.
- The Crime Severity Index (CSI) decreased for the 11 consecutive year. Both the violent (-5%) and non-violent (-2%) CSI decreased in 2014

Overall crime rates are substantially higher in the Territories, 2014



Compared to the south, crime rates are highest in the provincial north (particularly Saskatchewan and Manitoba) and territories, 2013



Almost two-thirds of criminal incidents not reported to police

- According to the 2014 General Social Survey, about one-third (31%) of crimes were reported to the police.
- Rates of reporting to the police were highest for incidents of household victimization (36%), followed by thefts of personal property (29%) and incidents of violent victimization (28%).
- For sexual assault, 83% of incidents were not reported to the police, while 5% of incidents were reported.
- Reasons for not reporting the incident to police included:
  - Believing the incident was not important enough (78%);
  - Believing there was a lack of evidence (52%);
  - Believing the police would not have found the property or offender (51%);
  - Thinking no one was harmed or there was no financial loss (49%) and
  - Feeling that the incident was a personal matter (43%).

Chronic offenders are responsible for a large volume of crime

- There are no national data for chronic or repeat offenders.
- According to BC Corrections, in 2012:
  - More than two-thirds of offenders were reoffenders;
  - 40% had 10 or more convictions over 5 years; and
  - 5% had 24 or more convictions over 5 years.
- According to Statistics Canada, in Saskatchewan (2015):
  - 65% of persons with a police contact had at least one re-contact with police
  - 21% of persons with a police contact were responsible for 57% of police volume (5 or more contacts) within 2 years
  - Prevalence of re-contact was highest among
    - youth (younger than 15 years);
    - those found guilty; and
    - those who are sentenced to custody

There is a high prevalence of persons with substance abuse and mental disorders in the CJS

Mental Health

- Prevalence of offenders with mental health disorders is 2 to 3 times higher than in the general population and the prevalence has been increasing.
- Excluding substance abuse and anti-social personality disorder, over 40% of male and over 50% of female federal offenders have a lifetime prevalence of a mental disorder.

Substance Abuse

- The Correctional Service of Canada (CSC) reports that 80% of federal offenders have past or current substance abuse issues.
- Other studies report that two-thirds of crimes are committed while under the influence of alcohol or drugs.

Neurocognitive Disorders and Fetal Alcohol Spectrum Disorder (FASD)

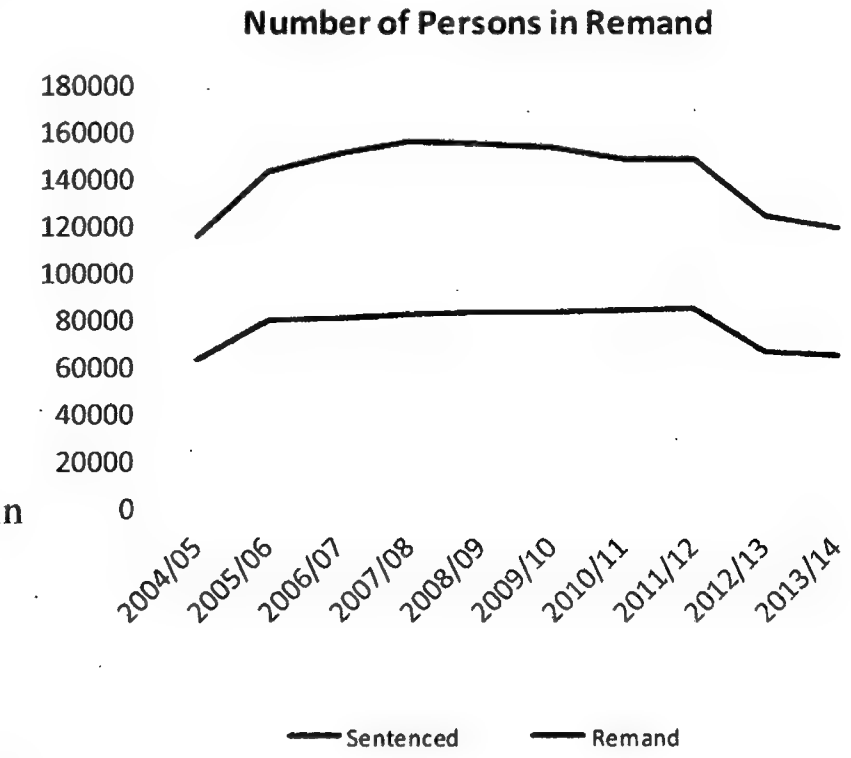
- The Yukon Department of Justice will release results from a FASD prevalence study in March 2016. Previous correctional file reviews found that 22% of this population may have FASD.
- A study at a federal penitentiary in Manitoba found 10% of the sample had FASD and 70% had 2 or more neurocognitive deficits (e.g., memory, learning, etc.).
- Another study by CSC of male federal offenders found that 25% have cognitive deficits.

We are lacking a full picture of the bail issue

- Official statistics and research are lacking which prevents a full picture of the bail issue.
- Based on an older study from Ontario, police are more likely to detain accused for a bail hearing than previously. The proportion of criminal cases that began in bail court rose from 39% in 2001 to 50% in 2007.
- This study also found that bail cases are requiring more appearances and the time it takes to make a bail decision has increased. In Ontario, in 2001 it took an average of about four days to complete a bail process. By 2007, this had increased to almost six days.
- Data from 4,013 bail court observations in eight different Ontario courthouses (from 2006-2008) found that in 76% of the cases the appearances were adjourned.
- A Justice Canada study in 2008 found that those who were male, single, Indigenous, unemployed and charged with robbery, administration of justice or break and enter were more likely to be detained by both police and court.
    - This study also found that one-quarter (25%) of accused were identified as violating or breaching their order of release by police, while a smaller proportion of accused violated their bail order (18%).
- Criminal justice professionals have noted an aversion to risk reduces discretion at all stages of the bail decision-making process.

More than half of accused in custody have not been convicted

- Since 2004/05 the number of persons in remand has outnumbered those in provincial/territorial sentenced custody.
- Adults in remand made up 54% of the custodial population, while those in sentenced custody made up 46% in 2013/2014.
- In 2013/14, the largest proportions of remanded persons were in Nova Scotia (67%), Ontario (63%) and Manitoba (62%).
- In 2013/14, Indigenous offenders accounted for 24% of all admissions to remand, up from 19% in 2005/06.
- The number of days in remand has been increasing in some jurisdictions (notably Nova Scotia, New Brunswick, Yukon).
- In 2008/09, the longest number of days in remand was 46 (Newfoundland) and the shortest was 4 (Quebec).



Administration of justice, impaired driving and theft account for over 40% of court caseload

- Administration of justice offences accounted for 23% of all cases in adult criminal court
- Impaired driving cases (11%) and theft (10%) accounted for the next highest volume of cases

- Median days to case completion is 123 days; however it varies by jurisdiction and offence type (2013/14)
  - Quebec (238), Manitoba (159) and Nova Scotia (155) have higher than national average median days (123)
  - Homicides had the longest median days to case completion (451 days), followed by sexual assault cases (321 days) and attempted murder cases (314 days).

- A Justice Canada research study (2008) found that cases were longer when:
  - The accused had a criminal history
  - The most serious offence was violent
  - There was no guilty plea
  - The accused breached release conditions
  - There was inconsistent legal representation

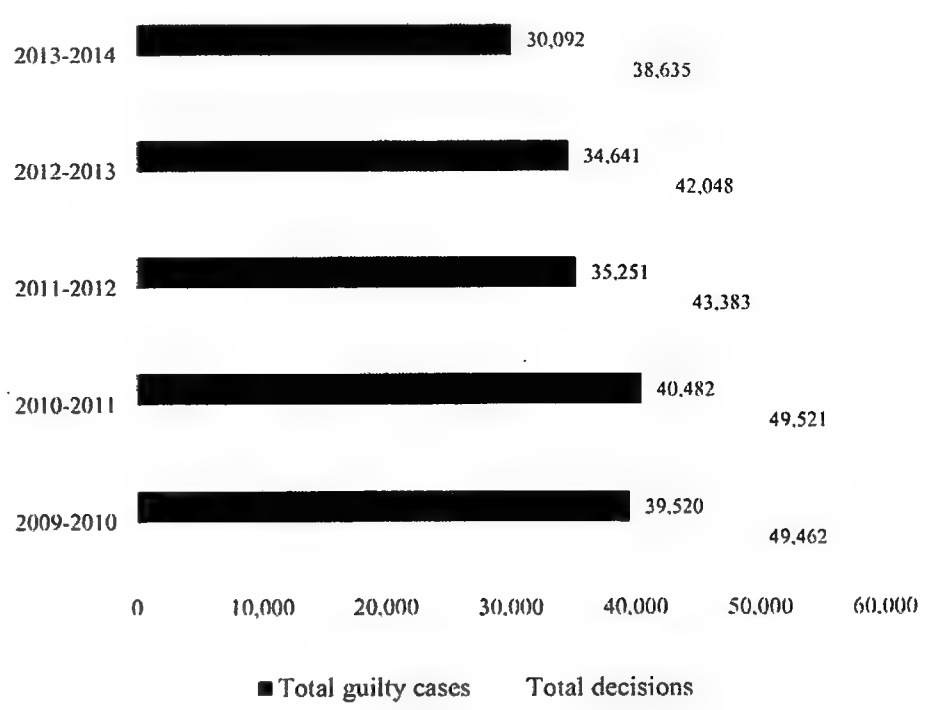
Administration of Justice Offences (AOJOs) are responsible for a large proportion of CJS resources

- In 2014, AOJOs represented 9% of police-reported *Criminal Code* incidents.
- The rate of AOJOs that result in a charge increased by 4% from 2006 to 2014.
- Rates of AOJOs are highest in the territories and Saskatchewan:
  - Northwest Territories: 2,448 incidents per 100,000 population
  - Yukon: 2,300 incidents per 100,000 population
  - Saskatchewan: 2,041 incidents per 100,000 population
  - Nunavut: 1,705 incidents per 100,000 population
- Since 2006, approximately 7 in 10 cases for AOJOs result in a guilty decision. This is higher than the average for all other offences.
- In 2013/14, 50% of AOJOs in adult criminal court were given custody, which is higher than crimes against property (41%) and crimes against the person (36%).
- In 2009, administration of justice offences cost the criminal justice system an estimated $729 million.

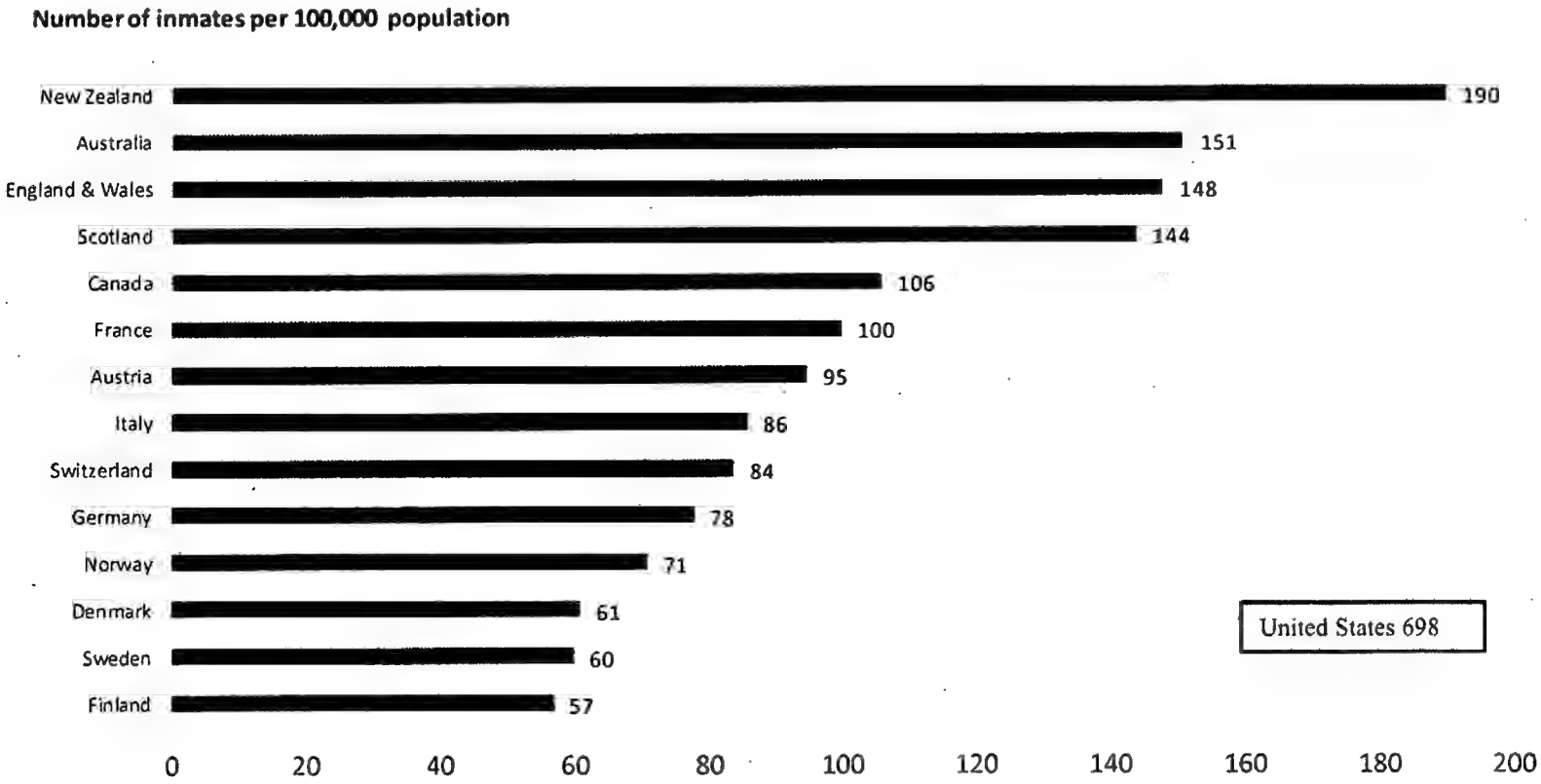
While the number of impaired driving cases has decreased, the time to case completion has increased

- The number of impaired driving cases decreased by 22% from 2009/10 – 2013/14
- The median days to case completion was 141 days in 2013/14, up from 115 days in 2012/13.
- The national conviction rate has stayed near 80% for the past five years.
- 9% of impaired drivers received a custodial sentence; sentences are a median of approximately one month.
- Fines represent the majority (82%) of most serious sentences given for impaired driving convictions.

Impaired Driving Cases: Total Decisions and Guilty Cases, National, 2009/10 – 2013/14

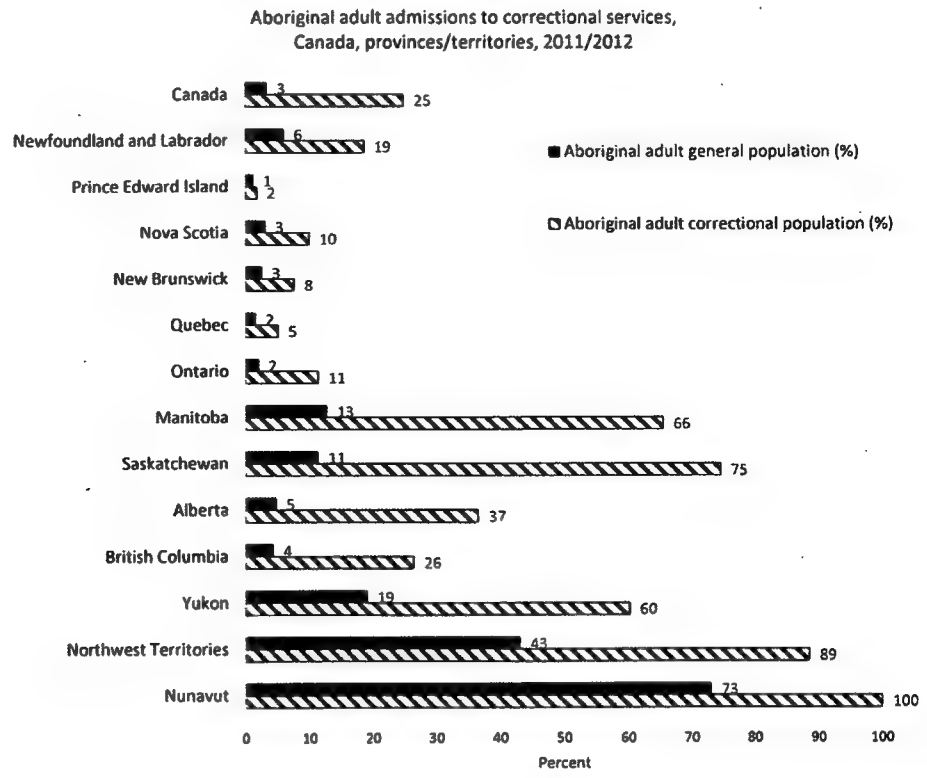


Canada's incarceration rate is higher than most Western European Countries



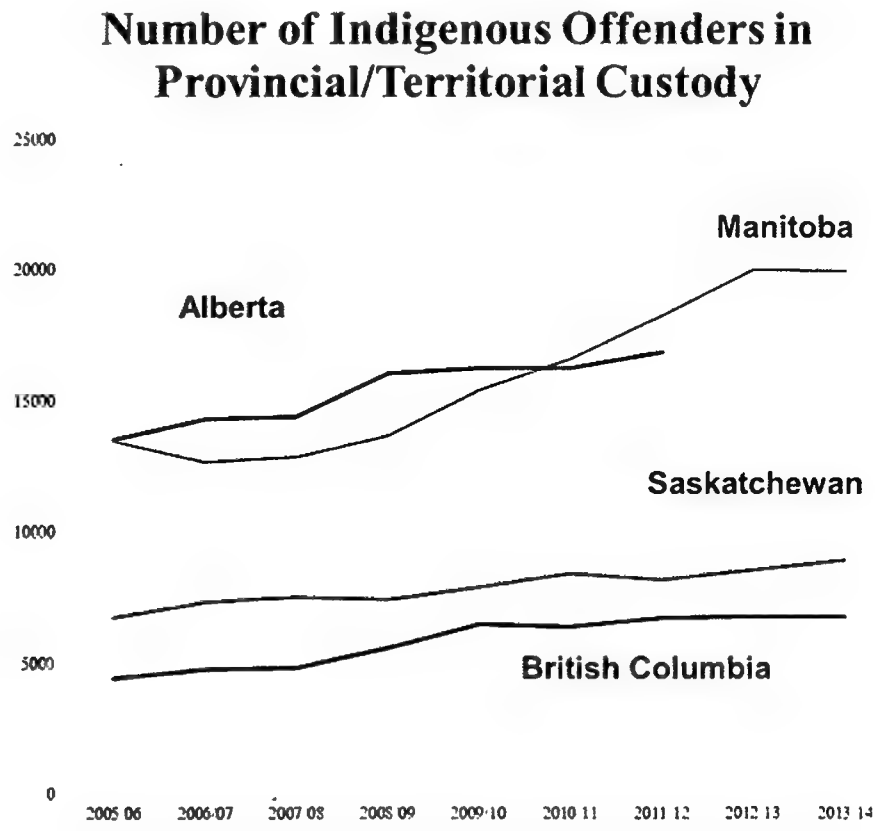
Indigenous offenders are overrepresented in corrections in all jurisdictions in Canada

- The proportion of Indigenous male adults admitted to sentenced provincial/territorial custody in Canada is about 8 times higher than their representation in the Canadian adult population. The proportion is 12 times higher for Indigenous women in custody.



Indigenous offenders in provincial/territorial corrections have continued to increase across Canada

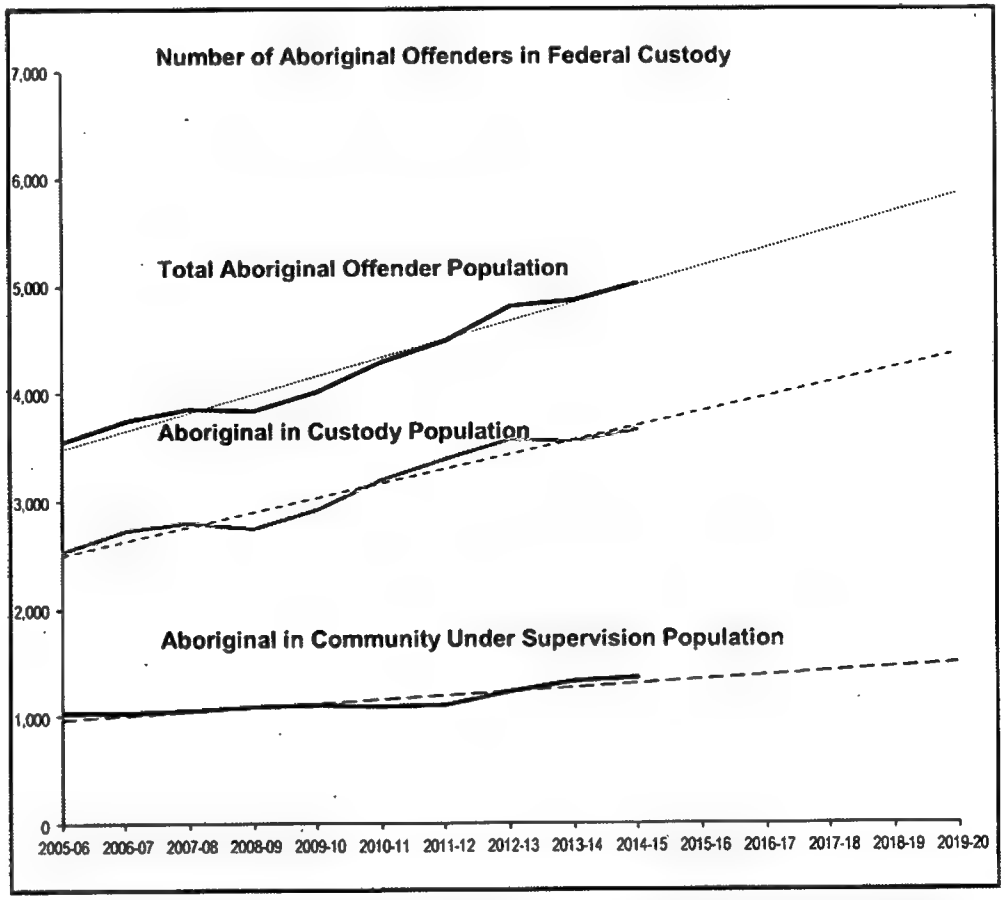
- About one-quarter (25%) of adult males admitted to provincial/territorial sentenced custody in Canada in 2013/2014 were Indigenous, up from 15% in 2000/2001.
- More than one-third (36%) of adult women admitted to provincial/territorial sentenced custody in Canada in 2013/2014 were Indigenous, up from 18% in 2000/2001.
- In 2013, compared to the Canadian Indigenous population, Indigenous offenders were most overrepresented in Alberta (9 times for men and 13 times for women).
- In 2013/14, there was an 11% decrease in the overall number of offenders in provincial/territorial sentenced custody, from the previous year.



Note: data not available for Alberta for 2012/13 and 2013/14

If no changes are made, the number of Indigenous offenders in federal custody will continue to increase

- If nothing changes, approximately 1,000 more offenders will be in federal custody in ten years.
- The Indigenous population is rising. By 2036 Indigenous people could account for between 4.6% and 6.1% of the Canadian population.
- The Indigenous population is young and since most crime is committed by young people, the Indigenous offender population may grow partially due to a young and growing Indigenous population.
- The median age at admissions of Indigenous offenders is lower (30) compared to non-Indigenous offenders (34).
- In 2014/15, 22% of the total federal offender population was Indigenous. An increase of 17% from 2010/11.
- In 2013/14 there was a 3% decrease from the previous year in the overall number of federal offenders in custody.



The dashed lines represent the projected numbers of Indigenous offenders in federal custody until 2019/20

Conclusion

- Some important areas of the criminal justice system are lacking data to help create a national picture and fully understand the nature of the problem.

- There is some evidence that many of the criminal justice system pressures (e.g., increased use of remand, increasing number of mandatory minimum penalties, high rates of Administration of Justice Offences, etc.) is disproportionately affecting Indigenous accused and other vulnerable groups (those with mental health issues, Fetal Alcohol Spectrum Disorder, and substance dependence).

- Reforms and addressing these system pressures would likely result in a reduced number of vulnerable populations coming into repeated contact with the system, thus lessening the financial burden on the system, increasing social welfare and security of Canadians and increasing the objectives and principles of timely, fair, sustainable and equitable access to justice.

s.23

Department of Justice Canada | Ministère de la Justice Canada

CCM#: 2016-003870
Solicitor-Client Privilege
For Information

MEMORANDUM TO THE DEPUTY MINISTER

Legal Opinion regarding the *Inquiry into Missing and Murdered Indigenous Women and Girls* (FOR INFORMATION)

SUMMARY

[redacted]

s.23

Solicitor-Client Privilege

[redacted]

Attachment

Annex A – [redacted]

Annex B – [redacted]

Prepared by:
Charles J. Bélanger, Counsel, INAC Legal Services Unit (819-953-2288)
Date: February 12, 2016

CCM#: 2016-003870

Solicitor-Client Privilege

[redacted]

Attachment

Annex A – [redacted]

Annex B – [redacted]

Prepared by:
Charles J. Bélanger, Counsel, INAC Legal Services Unit (819-953-2288)
Date: February 12, 2016

CCM#: 2016-003870

Solicitor-Client Privilege

Reviewed by:
Ana Stuhec, General Counsel/Director, INAC Legal Services (819-953-1940)
Date: February 19, 2016

Approved by:
Michael Hudson, A/Assistant Deputy Attorney General, Aboriginal Affairs Portfolio
(613-907-3652)
Date: March 8, 2016

Approved by.
Pierre Legault, Associate Deputy Minister
Date: March 10, 2016

CCM#: 2016-003870

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Department of Justice Canada | Ministère de la Justice Canada

CCM#: 2016-004798
Classification: Protected B
FOR APPROVAL
Action by/Deadline: 2016/03/07

MEMORANDUM TO THE DEPUTY MINISTER

(THCEE) One-Off Request: Hospitality Approval for the Diversity Working Group for March 7, 2016
(FOR APPROVAL)

s.19(1)

SUMMARY

- This is a request for approval for the Hospitality costs for the Diversity Working Group event to be held on March 7, 2016.
- The event will feature a presentation by Dr. Nadia Ferrara, an anthropologist and Senior Advisor at Indigenous and Northern Affairs Canada, and [redacted] a member of the Cowessess First Nation. Their presentation is entitled: Barriers and Solutions to Hiring, Promoting and Retaining Indigenous Employees in the Public Service.
- We have minimized costs by holding the event in-house and we will be offering only basic refreshments during the event estimated at the most $100.00.

DO YOU APPROVE under the Expenditure Initiation Authority and Certified pursuant to Section 32 of the *Financial Administration Act*? Please also sign the THCEE form under Section 8.

BACKGROUND OF THCEE ACTIVITY

The Diversity Working Group was established in the Public Law Sector several years ago, to provide support within the Sector on diversity issues in the workplace and to show leadership on these issues across the Department.

The Group holds awareness events and meetings, organizes speaking engagements, works in tandem with other diversity related groups and provides support on diversity issues to the Assistant Deputy Minister of Public Law and Legislative Services Sector.

On March 7, 2016, the event will talk about the rates of Indigenous hiring and promotion continue to be uneven across the public service. For example, although representation in the executive category (EX) has increased from 2.9% to 3.7% in recent years, the number of Indigenous public servants in this category remains below the workforce

availability. At the same time, the Indigenous population is growing faster than any other demographic in Canada, altering both the workforce and the population that the public service represents.

KEY CONSIDERATIONS / OPTIONS

The event is an important opportunity for managers and employees to gain awareness and knowledge regarding challenges in hiring and promotion of Indigenous employees and possible solutions.

This event contributes to the qualitative goals related to promoting Employment Equity in the department.

FINANCIAL IMPLICATIONS

The event will require the expenditure of some limited resources.

1. We are limiting attendance primarily to the Public Law Sector.
2. The venue is the most economical available.
3. The cost of this event is within the established CAP.
4. The event respects all the rules, directives and guidelines related to THCEE.

COMMUNICATION PLAN

N/A

RECOMMENDATION

It is recommended that you indicate your concurrence by signing the approval block in the summary box and the attached THCEE in Annex A.

Attachments
Annex A - Detailed signed THCEE

Prepared by:
Zuzana Fernandes, PLLSS, (957-4945)
Date: March 2, 2016

Reviewed by Business Director:
Lyson Simard (952-3905)
Date:

Reviewed by Direct Report to the ADM:
Edward Livingstone, Director General, PLLSS, (941-2317)
Date: March 2, 2016

- ☑ The expense is within my budget.
- ☑ I confirm that funds will be committed.
- ☑ The policies and directives have been respected.

Recommended by Responsible ADM:
Laurie Wright, Public Law and Legislative Services Sector, (941-7890)
Date: March 2, 2016

CCM#: 2016-004798

Section 1: Activity Information (Mandatory) / Information sur les activités (obligatoire)

[redacted] — Additional Travel Details / Détails supplémentaires de voyage — [redacted] — Section 3: Hospitality / Accueil — [redacted]

Activity Number / Numéro de l'activité	Core or Non-Core / Essentielles ou non-essentielles	What? / Quoi ? (Name or brief description / Nom ou description brève)	Why? (explain why it is required) / Pourquoi ? (expliquer la nécessité) (Purpose (Objective) of Activity / But (objectif) de l'activité)	Participants / Rationale for # of participants / Rationale pour le # de participants	Date: from / de	Date: to / à	Location / Emplacement: Venue, City / Lieu, Ville	# of Participants / Nombre de participants: Public Servants / Fonctionnaire	# of Participants / Nombre de participants: Non-Public Servants / non-fonctionnaire	Name of Traveller / Nom du voyageur	Pourquoi ne pas utiliser la méthode Virtuel Presence? / Pourquoi ne pas utiliser la méthode Virtuel Presence?	Travel Type / Type de voyage / Travel Category / Catégorie de voyage	City / Ville: From / De	Mode de Transport / Transportation: Type / Catégorie	Mode de Transport / Transportation: Cost / Coût	Accommodations / Hébergement: Type / Catégorie	Accommodations / Hébergement: Cost / Coût	Meals / Repas: Cost / Coût	Accommodations chosen / Justification / Hébergement choisi / Justification: other costs / Frais accessoires	Estimated Expenditures / Estimation des dépenses: Total	Blanket Travel Authority and Annual Authority to Expend Hospitality / Autorisation générale de voyage et autorisation générale d'engager des dépenses d'accueil: Yes / Oui No / Non	Blanket Travel Authority and Annual Authority to Expend Hospitality / Autorisation générale de voyage et autorisation générale d'engager des dépenses d'accueil: Maximum Cost for all Activities / Montant maximal pour toutes les activités	Blanket Travel Authority and Annual Authority to Expend Hospitality / Autorisation générale de voyage et autorisation générale d'engager des dépenses d'accueil: Estimated # of activities / Estimation du nombre d'activités	# of Participants / Nombre de participants: Public Servants / Fonctionnaire	# of Participants / Nombre de participants: Non-Public Servants / Non-fonctionnaire	Host / Hôte: Name / Nom	Location / Emplacement: Facility / Installation	Location / Emplacement: Explain / Explication	Exceptional Hospitality Components / Éléments d'accueil exceptionnel
1	non-core	Diversity Working Group	The Diversity Working Group was established in the Public Law Sector several years ago, to provide support within the Sector on diversity issues in the workplace and to show leadership on these issues across the Department.	We expect approximately 30 attendees and will spend a maximum of $100 00 for refreshments Refreshments are appropriate to ensure that the events will be well received and attended and its goals achieved.	07-Mar-16	07-Mar-16	Ottawa												$0.00				30		PLLSS	Government facility / Installation gouvernementale		

Grand Total / Grand Total

Section 6: Approvals / Approbations

Recommended by / Recommandé par :

Financial Management Advisor or Regional Director of Finance / Conseiller en gestion financière ou Directeur régional des finances — Date: 2/3/16

Recommended by / Recommandé par :

Director of Business Management / Directeur de la gestion des activités — Date: 2/3/16

Expenditure Initiation Authority and Certified pursuant to Section 32 of the Financial Administration Act /
Pouvoir d'engagement des dépenses et Certifié en vertu de l'Article 32 de la *Loi sur la gestion des finances publiques*

Name / Nom	Signature	Initials	Date
Laurie Wright			March 2, 2016

Section 4: Conferences / Conférences						Section 5: Events - Other Expendi		Section 6: Other Comments / Autres commentaires	Section 7: Summary / Sommaire						
Food, Beverages and Other / Aliments, boissons et autres	Forecasted Expenditures / Dépenses prévues		# of Participants / Nombre de participants		Speaking Checklist / Liste de vérification sur les allocutions	Forecasted Expenditures /							Content / Ressource		
Type / Catégorie	Cost per Individual / Coût par individu	Total Cost / Coût total	Public Servant / Fonctionnaire	Non-Public Servant / Non-fonctionnaire		Total Cost / Coût total	Forecasted Expenditures / Type of Expenditure / Catégorie de dépense	Total Cost / Coût total	Description	Total Forecasted Expenditures / Dépenses totales prévues	Funding / Financement	Cost Centre / Centre de coût	Level of Approval Required / Niveau d'approbation requis	Approved or Declined/ Approuvé ou refusé (initiales)	Sector-Secteur	Name / Nom	Phone # / # de téléphone
Refreshment / Rafraîchissement	$3.33	$100.00							We require the DM's approval because the ADM will participate to this event.	$100.00	Justice (JUS)	51030	Deputy Minister / Sous-ministre		PLLSS	Edward Livingstone	941-2317
								$100.00									

Department of Justice Canada | Ministère de la Justice Canada

s.69(1)(g) re (a)

CCM#: 2016-003318
Protected B
For Information

MEMORANDUM TO THE DEPUTY MINISTER

Indigenous Nation to Nation Relationship Meeting with INAC and PCO, Feb. 18, 2016 @ 11:00 AM, Rm. 408, Langevin Building
(BRIEFING NOTE FOR MEETING)
SUMMARY

- PCO has organized a DM-level meeting between JUS, INAC and PCO to discuss the Indigenous Nation to Nation Relationship on February 18, 2016.
- The intention to renew the relationship with indigenous peoples based on nation-to-nation relations requires meaningful and tangible change in how the federal government interacts with indigenous nations.
- [redacted]
- [redacted]

BACKGROUND

PCO has organized a DM-level meeting between JUS, INAC and PCO to discuss the Indigenous Nation to Nation Relationship on February 18, 2016. Currently, there is no agenda or accompanying documents for this meeting.

The Government has clearly stated its intention to renew the relationship with indigenous peoples based on nation-to-nation relations. These statements need to translate into meaningful and tangible change in substance on how the federal government interacts with indigenous nations, rather than just a new tone or simply reformulated language within existing policy approaches. The commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples similarly points to a different way of interacting with indigenous nations.

This meeting may provide an opportunity to confirm an understanding of the impact of the nation to nation relationship, and the direction on the work.

DISCUSSION

[redacted]

[redacted]

At the recent ADM forum, the Prime Minister stressed that the relationship with Indigenous peoples is the core of the founding of our nation and that this relationship must be part of our conversation. [redacted] s.23

[redacted]

RESOURCE IMPLICATIONS

N/A

CCM#: 201x-xxxxxx

Choose Classification

s.69(1)(g) re (a)

COMMUNICATION IMPLICATIONS
N/A

NEXT STEPS

[redacted]

Attachment(s)
Annex A – [redacted]
Annex B -
Annex C – [redacted]

Prepared by:
Diana Kwan
Chief of Staff and A/Senior Counsel, AAP
Taskforce on Constitutional Relations with Indigenous Nations
613-907-3649
Date: Feb. 12, 2016

Reviewed by:
Michael Hudson
Taskforce on Constitutional Relations with Indigenous Nations
604-775-5173
Date: Feb. 12, 2016

Approved by:
Michael Hudson
Taskforce on Constitutional Relations with Indigenous Nations
604-775-5173
Date: Feb. 12, 2016

Approved by:
Pierre Legault, Associate Deputy Minister
Date:

CCM#: 201x-xxxxxx

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